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EXAMINER				
STUART, COLIN W				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/575,933

Applicant(s)

KREUTZMANN ET AL.

Examiner

COLIN STUART

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-12 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This office action is in response to the amendment filed 10/25/10. As directed by the amendment, claim 1 has been amended and no claims have been cancelled nor added. As such, claims 1-12 are pending in the instant application.

Allowable Subject Matter

2. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The limitation relating to the nozzle element including a third part made of a less resilient material than the first part of the nozzle element is considered to be the allowable subject matter.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-5 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng (2004/0227011) in view of Pollet et al. (2004/0089292).

In regards to claim 1, Tseng shows an inhalation therapy device which includes a nebulizing chamber (space between reference numeral 1 and 22; see Fig. 4), and an aerosol generator (213 see para. 0011 ln. 15-18; note that element 213 is the connection to a air compressing device which generates the aerosol), which is arranged such that it releases an aerosol into the nebulizing chamber (see Fig. 4 and para. 0011), and which includes a nozzle element 211 and at least one channel (see Fig. 4, channel defined by area between elements 211 and 1) extending between the nozzle element and a member 1 (see Fig. 4), wherein the member is removable to expose portions of the at least one channel formed by the nozzle element (see para. 0003 ln. 3-4 and Fig. 3). Tseng is silent as to the nozzle element including at least a first part and a second part, the first part being made of a more resilient material than the second part and the first part being attached to the second part. However, Pollet teaches an inhalation therapy device which includes a nozzle element (see Pollet Fig. 9) which includes at least a first part (Pollet 73) and a second part (Pollet 72), where the first part is made of a more resilient material than the second part (see Pollet para. 0059 ln. 1-5) and the first part is attached to the second part of the nozzle (see Pollet Fig. 9). It would have been obvious to one of ordinary skill in the art at the time the invention was made to

modify the Tseng device's nozzle element to include a first part and a second part where the first part is made out of a more resilient material than the first as taught by Pollet in order to provide that "the spray pattern which depends on the orifice geometry is not adversely affected" (Pollet para. 0059 In. 9-10).

In regards to claim 2, the modified Tseng device includes a first part of a nozzle element which has a cross-section which tapers further than that of the second part of the nozzle element (see Pollet Fig. 9).

In regards to claim 3, the modified Tseng device's first part of the nozzle element is made of silicone rubber or a thermoplastic elastomer (see Pollet para. 0059 In. 4-5).

In regards to claim 4, the modified Tseng device's first and second parts of the nozzle element include a two-component structure (see Pollet Fig. 9) having the first part of the nozzle element molded on the second part (see Pollet para. 0059 In. 1-5).

In regards to claim 5, the modified Tseng device's first part of the nozzle element contains a nozzle outlet (see Pollet Fig. 9).

In regards to claim 10, Tseng shows an inhalation therapy device which includes a nebulising chamber (space between reference numeral 1 and 22; see Fig. 4), and an aerosol generator (213 see para. 0011 In. 15-18; note that element 213 is the connection to a air compressing device which generates the aerosol), which is arranged such that it releases an aerosol into the nebulising chamber (see Fig. 4 and para. 0011), and which includes a nozzle element 211. Tseng is silent as to the nozzle element including at least a first part, the first part being made of a more resilient material than a member of the device on which the nozzle element is moulded or to which the nozzle

element is attached. However, Pollet teaches an inhalation therapy device which includes a nozzle element (see Pollet Fig. 9) including at least a first part (Pollet 73) being made of a more resilient material than a member (Pollet 72) of the device on which the nozzle element is moulded or to which the nozzle element is attached (see Pollet para. 0059 ln. 1-5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Tseng device's nozzle element to include at least a first part made of a more resilient material than a member on which the nozzle element is moulded to or attached in order to provide that "the spray pattern which depends on the orifice geometry is not adversely affected" (Pollet para. 0059 ln. 9-10).

In regards to claim 11, the modified Tseng device's first part of the nozzle element is made of silicone rubber or a thermoplastic elastomer (see Pollet para. 0059 ln. 4-5).

In regards to claim 12, the modified Tseng device's first part of the nozzle element contains the nozzle outlet (see Pollet Fig. 9).

5. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng (2004/0227011) and Pollet et al. (2004/0089292) as applied to claim 1 above, and further in view of Dobbeling et al. (6,045,058).

In regards to claim 6, the modified Tseng device teaches all the limitations as discussed above, but is silent as to the nozzle having a third part containing the nozzle outlet. However, Dobbeling teaches an inhalation therapy device which includes a

nozzle element having a first (Dobbeling 31), second (Dobbeling 35), and third (Dobbeling 32; Fig. 1) parts with the third part containing the nozzle outlet. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the modified Tseng device's nozzle element to include a third part with a nozzle outlet as taught by Dobbeling in order to provide that "good stability of the full jet is achieved" (see Dobbeling col. 5 ln. 30-31).

In regards to claim 7, the modified Tseng device, as modified above in rejection of claim 6, includes a third part of the nozzle element which has a cross-section which tapers further than that of the first part of the nozzle element (see Fig. 1 of Dobbeling).

In regards to claim 8, the modified Tseng device teaches molding structures (see Pollet para. 0059 ln. 1-5) and although the modified Tseng device is silent as to the third part explicitly being molded to the first part, one of ordinary skill in the art at the time the invention was made would have found it obvious to mold the first and third parts of the nozzle outlet together as this type of molding to form parts of a nozzle element is well known in the art (see Pollet para. 0059 ln. 1-5).

Response to Arguments

6. Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following documents are considered to be pertinent art: Piper (6,338,443), Fraccaroli (6,796,513), and Salter et al. (5,584,285) are all related to similar inhalation therapy devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLIN STUART whose telephone number is (571)270-7490. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/COLIN STUART/
Examiner, Art Unit 3771

/Edward K. Look/
Supervisory Patent Examiner, Art Unit 3745